

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ISAAC E. ASH,

Plaintiff,

-v-

MAGLAN CAPITAL HOLDINGS LLC, MAGLAN
CAPITAL LP, MAGLAN DISTRESSED FUND LP, DAVID
D. TAWIL, SHLOMO AZARBAD, and JOSEPH J. SITT,

Defendants.

19 Civ. 5650 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has been advised that both parties now consent to a bench trial. Dkt. 59. The Court looks forward to such a trial.

As to the dates when trial will be held, the Court's schedule is generally open between April 15, 2021 and April 23, 2021, with the exception of April 19. The Court would propose to set aside three to four days during that period for this trial. The Court directs counsel, by Friday, February 19, 2021, to submit a joint letter addressing counsels' days of availability during that time period (and confirming that 3-4 days should suffice for trial).

As to the means by which trial will proceed, the Court is willing to conduct this bench trial by remote means, provided that all parties consent. The Court directs the counsel to confer, and, should all parties agree, affirm in the letter due Friday, February 19 that that all parties agree to proceed remotely. For counsels' planning purposes, the Court's intention is to receive witness testimony live, rather than receiving the direct testimony of party witnesses by declaration, as the Court understands such to be counsels' preference.

Finally, based on the colloquy at the February 8, 2021, pre-motion conference, the Court's judgment is that is efficient to brief one discrete summary judgment motion before trial, as it has the capacity to moot the trial altogether. Specifically, plaintiff indicated that if plaintiff were determined to be entitled as a matter of law to what plaintiff termed "rescission"—which the Court understood to be plaintiff's means of describing an entitlement to a \$338,696.78 cash payout—plaintiff would drop all other claims. On that premise, the Court therefore authorizes (but does not require) plaintiff to move for summary judgment on that limited issue. Should plaintiff wish to do so, plaintiff's motion and supporting materials are due February 26, 2021. Defendants' opposition is due March 5, 2021. The Court does not invite a reply. In the interest of conserving the parties' resources, the Court will not, however, entertain summary judgment briefing on other issues.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: February 16, 2021
New York, New York